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Mr. Justice Cardozo, A Liberal Mind in Action (Book Review)

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lawyers to guide themselves in the everyday work which they have to do. With that problem, this volume is but little concerned and could hardly be expected to treat.

One of the chief difficulties involved in an adequate study of jurisprudence is foreshadowed in this book but not fully developed. We lack, I think, a clear philosophy of law, an agreement as to the ends which law is to achieve. Without that any study of jurisprudence is bound to be in the end haphazard. In the development of our social and economic life, law will indeed play its part but it will play this part unconsciously or as a tool of those who are in a position to wield it unless the end of law is clearly and definitely in the minds of the law-makers. This obviously involves some agreement as to the ends of social life in a modern, civilized community. But there is no agreement. Everybody wants the world to be a happier place to live in for all of us, with economic security assured and leisure for cultural development afforded to all, but the process by which this ideal is to be attained has divided the world into conflicting and irreconcilable groups. It is said that modern law is the instrument of one of these groups, and the problem arises because the non-assenting members of the community are seeking to explain that law is a force apart from this conflict. Those of us who think that this effort is futile can pin but little faith on the prospects of psychology as an effective vehicle in the development of current jurisprudence.

Having said all this, however, it is only fair to add that the scholarly work done by this author is an extremely valuable adjunct to the growing library of jurisprudence; that his explanations of modern psychological theory are always illuminating, thoroughly readable, and afford a great deal more than mere "professorial amusement." Many forthright problems are presented and much sound analysis and thought can be found in the pages of this book. It ought to be a primer for law school students. This is the type of literature which I think will become more common in the near future and which will attract the attention of juristic writers more and more as time goes on.

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MR. JUSTICE CARDOZO, *A LIBERAL MIND IN ACTION*. By Joseph P. Pollard. New York: The Yorktown Press, 1935, pp. xv, 327.

No jurist of recent years has proven himself more popular or fascinating, either because of the facility and grace of his pen, or the depths of his well ordered yet intriguing mind, than Justice Benjamin N. Cardozo. He who would and can penetrate the hidden recesses of this juristic mind with understanding and analysis should never want for interested and avid readers. It is to this pleasant yet exacting task of exploring the mind of Justice Cardozo in action that the author of the book under review has devoted himself. Perhaps we crave too much. Perhaps we demand an exposition that would challenge the literary capacity and keen discernment of Justice Cardozo, himself. Or, it

may be that we are requiring a psychoanalysis of a subtle and scholarly mind that defies such treatment. In any event, the book is disappointing.

What Mr. Pollard has done is not what we hoped for, but rather he has classified under orthodox headings the important decisions in which Mr. Justice Cardozo has participated; he has stated in substance the issues that were therein decided; and has, above all, repeatedly flattered and complimented the learned Justice and "his Court" for deciding so fairly, if not perfectly. All of this, in spite of the fact that there is probably no one who is so aware as is Justice Cardozo of the pitfalls of the judicial process and so cognizant of the shortcomings of any decision of any court, especially where the decision calls for a choice of method in deciding. To understand the mind of a Cardozo we must investigate and try to understand the choice of method in the given case rather than to assume, as is done in this book, that practically every decision is beyond unfavorable criticism.

There are many interesting and paradoxical phases of the mind of the venerable Justice that literally cry out for discussion and debate; such as his tenacious adherence to order and to *stare decisis* coupled with his admitted pragmatic approach to the problem of the hour; and his liberality in tort and civil rights cases in contrast to his somewhat technical conservatism in criminal cases. These are some of the paradoxes that we hoped would be solved by Mr. Pollard; yet these are the very matters that we look for in vain in the volume under review.

The author's monotonous and uniform discussion of case after case which has been decided by Justice Cardozo or "his Court" can only be justified if the title of the book were to be revamped. As amended, the title should indicate that the volume is a compendium of abstracted decisions properly classified for the use of those who are interested in knowing what has been decided by Justice Cardozo without particular concern as to why he has so decided.

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CIVILISATION AND THE GROWTH OF LAW. A Study of the Relations between Men's Ideas about the Universe and the Institutions of Law and Government. By William A. Robson. New York: The Macmillan Company, 1935, pp. xv, 354.

The sub-title of this book reveals its character in advance. The author should read Pareto, in order to see how well he has illustrated that realist's contention that books on social science concern themselves with derivations or rationalizations solely. Robson had, says the Introduction, "an irresistible desire" to write this volume. It is to be hoped that he is relieved; but it is at the expense of suffering on the part of the reader and of social science.

Naturally the author emerges with the bright, new idea that "a new freedom and new responsibility have been attained by the human race." The "irresistibility" connected with writing a book generally means that it will